

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 30 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NESTOR RAFAEL CALARA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-72758

Agency No. A96-149-866

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 18, 2008^{**}

Before: LEAVY, HAWKINS, and W. FLETCHER, Circuit Judges.

Nestor Rafael Calara, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming an immigration judge's ("IJ") decision denying his application for asylum,

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

withholding of removal, and relief under the Convention Against Torture (“CAT”). We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence, *Malhi v. INS*, 336 F.3d 989, 992-93 (9th Cir. 2003), and we deny the petition.

The record does not compel the conclusion that Calara has shown changed or extraordinary circumstances to excuse the untimely filing of his asylum application. *See* 8 C.F.R. § 208.4(a)(4),(5). Accordingly, we deny the petition as to the asylum claim.

Substantial evidence supports the agency’s adverse credibility finding. *See Singh-Kaur v. INS*, 183 F.3d 1147, 1149 (9th Cir. 1999). The IJ specifically and cogently referred to the non-credible aspects of Calara’s testimony that lacked detail and that conflicted with the testimony from his asylum interview. *See id.* at 1152-53.

In his opening brief, Calara fails to address, and therefore has waived any challenge to, the BIA’s determination that he is not eligible for CAT protection. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

PETITION FOR REVIEW DENIED.